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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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KATHLEEN L. RAY,

Plaintiff,

V.

DEUTSCHE BANK NATIONAL TRUST
COMPANY,

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Case No. 2:12-CV-00581-KJD-CWH

ORDER

17 Before the Court are Plaintiff Kathleen L. Ray's Motions for Temporary Restraining Order
18 and Preliminary Injunction (## 3, 4). Defendant Deutsche Bank National Trust Company has filed
19 an opposition and countermotion to dismiss (##12, 13) and Plaintiff filed a response, reply, and
20 motion for summary judgment (## 16, 17, 18). Defendant filed a reply to the motion to dismiss
21 (#20) and a response to the motion for summary judgment (#21) and Plaintiff filed a reply (#23).¹

22 || I. Background

23 Plaintiff obtained two mortgages on real property at 4631 Ondoro Ave, Las Vegas, Nevada
24 (the “Property”). The first mortgage was for \$448,000. First Franklin was the initial lender on both

¹ The Court requests that the parties take note of District of Nevada Special Order 109 which requires that “[a] separate document must be filed for each type of document or purpose.”

1 mortgages and both loans were secured by Deeds of Trust encumbering the Property. On September
 2 1, 2008, Plaintiff stopped paying her mortgage. Cal-Western Reconveyance Corporation, which had
 3 been substituted as trustee, recorded a Notice of Default on December 5, 2008. On December 23,
 4 2008 an assignment was recorded transferring the Note and Deed of Trust from First Franklin to
 5 Defendant Deutsche Bank as Trustee for FFMLT Trust 2005-FF8, Mortgage Pass-Through
 6 Certificates, Series 2005-FF8. Defendant purchased the Property at public auction on June 25, 2010
 7 for \$263,037.99.

8 On May 28, 2009, Plaintiff filed suit against Defendant, as well as First Franklin, and
 9 Cal-Western in the Eighth Judicial District Court of Nevada, case No. A591269. The state Court
 10 granted First Franklin and Cal-Western's Motion to Dismiss on September 16, 2009. On February
 11 15, 2012, the Nevada Supreme Court issued affirmed the dismissal. Ray v. Deutsche Bank National
 12 Trust, 2012 WL 516013 (Nev. Feb. 15, 2012); On February 10, 2011 Defendant filed an unlawful
 13 detainer action in Las Vegas Justice Court. Defendant obtained a Writ of Restitution from the Justice
 14 Court. Plaintiff's appeals were unsuccessful. Plaintiff then filed this action asserting various
 15 theories of recovery that have been rejected by the courts of this district.

16 II. Discussion

17 A. Legal Standard

18 Because Plaintiff has filed a motion for summary judgment, the arguments of the parties will
 19 be considering pursuant to a summary judgment standard.

20 Summary judgment may be granted if judicially noticeable documents, the pleadings,
 21 depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show
 22 that there is no genuine issue as to any material fact and that the moving party is entitled to a
 23 judgment as a matter of law. See, Fed. R. Civ. P. 56(a); see also, Celotex Corp. v. Catrett, 477 U.S.
 24 317, 322 (1986). The moving party bears the initial burden of showing the absence of a genuine issue
 25 of material fact. Id. The burden then shifts to the nonmoving party to set forth specific facts
 26 demonstrating a genuine factual issue for trial. See Matsushita Elec. Indus. Co. v. Zenith Radio

1 Corp., 475 U.S. 574, 587 (1986); Fed. R. Civ. P. 56(a). “[U]ncorroborated and self-serving
 2 testimony,” without more, will not create a “genuine issue” of material fact precluding summary
 3 judgment. Villiarimo v. Aloha Island Air Inc., 281 F.3d 1054, 1061 (9th Cir. 2002). Summary
 4 judgment shall be entered “against a party who fails to make a showing sufficient to establish the
 5 existence of an element essential to that party’s case, and on which that party will bear the burden of
 6 proof at trial.” Celotex, 477 U.S. at 322.

7 Plaintiff is representing herself *pro se*. Courts must liberally construe the pleadings of pro se
 8 parties. See United States v. Eatinger, 902 F.2d 1383, 1385 (9th Cir. 1990). However, “pro se
 9 litigants in the ordinary civil case should not be treated more favorably than parties with attorneys of
 10 record.” Jacobsen v. Filler, 790 F.2d 1362, 1364 (9th Cir. 1986).

11 B. Res Judicata

12 The doctrine of res judicata bars subsequent lawsuits raising claims based on the same set of
 13 transactional facts as the prior action. Ammex, Inc. v. United States, 334 F.3d 1052, 1055 (2003). If
 14 a court of competent jurisdiction has rendered a final judgment on the merits in a previous action
 15 involving the same parties and claims, a second suit is barred by res judicata. In re Int’l Nutronics,
 16 Inc., 28 F.3d 965, 969 (9th Cir. 1992), cert. denied, 115 S.Ct. 577 (1994). Furthermore, res judicata
 17 bars all grounds for recovery that could have been asserted, whether they were or not, in a prior
 18 lawsuit between the same parties on the same causes of action. Clark v. Bear Stearns & Co., 966
 19 F.2d 1318, 1320 (9th Cir. 1992).

20 Courts consider the following four factors when determining whether successive lawsuits
 21 involve the same causes of action:

22 (1) whether rights or interests established in the prior judgment would
 23 be destroyed or impaired by prosecution of the second action; (2)
 24 whether substantially the same evidence is presented in the two
 25 actions; (3) whether the two suits involve infringement of the same
 26 right; and (4) whether the two suits arise out of the same transactional
 nucleus of facts.

26 Littlejohn v. United States, 321 F.3d 915, 920 (9th Cir. 2003).

1 It is undisputed that the Eighth Judicial District Court and later the Nevada Supreme Court
2 established Defendant's right to foreclose in the prior action. It is also undisputed that the evidence
3 in the prior suit was the Deed of Trust and other foreclosure documents. It is undisputed that the
4 prior suit involved the right to possess the Property. Finally, there is no dispute that the prior suit in
5 the Eighth Judicial District Court arose out of the same operative facts.

6 Additionally, the unlawful detainer action in Justice Court precludes this action. “[O]nce a
7 state court grants an unlawful detainer judgment in favor of a foreclosure sale purchaser, the original
8 trustor or borrower is foreclosed under the doctrine of claim preclusion from arguing that the
9 foreclosure sale itself was improper.” In re Edwards, 454 B.R. 100, 108 (B.A.P. 9th Cir. 2011)
10 (citing Freeze v. Salot, 122 Cal.App.2d 561, 565–66, 266 P.2d 140, 142–43 (1954)).

11 Because Plaintiff's claims are barred by the doctrine of res judicata, summary judgment is
12 granted in favor of the Defendant. Plaintiff is warned that any further action against Defendant in
13 relation to the Property could result in sanctions by the Court, including an award of attorney's fees
14 pursuant to NRS § 18.010. The Court will not entertain motions to reconsider this Order.

15 **III. Conclusion**

16 **IT IS HEREBY ORDERED THAT** Plaintiff's Motions for Temporary Restraining Order
17 and Preliminary Injunction (## 3, 4) are **DENIED**.

18 **IT IS FURTHER ORDERED THAT** Plaintiff's Motion for Summary Judgment (#18) is
19 **DENIED**.

20 **IT IS FURTHER ORDERED THAT** Defendant's countermotion to dismiss (#13) is
21 **DENIED** as moot.

22 **IT IS FURTHER ORDERED THAT** summary judgment is **GRANTED** in favor
23 Defendant Deutsche Bank National Trust Company.

IT IS FURTHER ORDERED THAT the Clerk of Court shall enter judgment in favor of Defendant Deutsche Bank National Trust Company.

DATED this 17th day of September 2012.

Kent J. Dawson
United States District Judge